

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JAMES KEVIN RUPPERT,

Plaintiff,

vs.

No. CIV 09-138 MV/LFG

ERASMO BRAVO, et al.,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR
EXTENSION OF TIME TO FILE NOTICE OF APPEAL**

THIS MATTER comes before the Court on Plaintiff's Motion for Extension of Time to File the Notice of Appeal [Doc. 42]. No response is necessary.

Pro se Plaintiff James Kevin Ruppert ("Ruppert") filed a Complaint [Doc. 1] on February 11, 2009, alleging various violations of his constitutional rights by several Defendants while he was incarcerated at the Guadalupe County Correctional Facility in Santa Rosa, New Mexico. He was granted permission to file an Amended Complaint, and he did so on July 10, 2009 [Doc. 34].

On July 20, 2009, the undersigned Magistrate Judge entered an Analysis and Recommended Disposition [Doc. 37], recommending that certain claims and defendants be dismissed from the case but that Ruppert's allegations against Defendant Phil Aragon be allowed to proceed and that notice and waiver of service forms be issued for that defendant. Ruppert thereafter filed three sets of Objections [Docs. 39, 40, 41] to the Magistrate Judge's Report.

The case is currently under review by the Article III judge assigned to this matter, Chief United States District Judge Martha Vázquez. Ruppert states in his Motion that he "does not know the time line of procedure" for this review and is concerned that his time for appeal expires on August 29, 2009. [Doc. 42, at 2]. Ruppert is advised that his Objections were received by the Court, that they were timely, and that they will be considered by Judge Vázquez in her *de novo* review. At this point there is no ruling to appeal, and no need for an extension of time to appeal.

If the Recommended Disposition is accepted, certain defendants will be dismissed from the action and the case will proceed as against Defendant Phil Aragon. In that event, no appeal may be taken from the ruling until final resolution of the entire case, unless Judge Vázquez makes specific findings under FED. R. CIV. P. 54(b) and enters judgment immediately as to the dismissed defendants. Entry of a judgment as to less than all defendants is not the usual procedure, but if it occurs all parties will be given clear notice so they may file a Notice of Appeal at that time. If Judge Vázquez does not make the Rule 54(b) findings, no appeal may be taken until the allegations against Defendant Aragon are resolved and a final judgment has been entered.

At present, there is no pending deadline for filing a Notice of Appeal, and the Court will therefore deny Ruppert's Motion for Extension of Time as unripe.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Extension of Time to File the Notice of Appeal [Doc. 42] is denied, as there is no pending deadline for filing a Notice of Appeal.



Lorenzo P. Garcia
Chief United States Magistrate Judge